

Rules on NGO accreditation

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Peter Van den Bossche



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Faculty of Law
Universiteit Maastricht
Postbox 616
6200 MD
Maastricht
The Netherlands

Author email: p.vandenbossche@ir.unimaas.nl

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Rules on NGO Accreditation

Do Existing Legal Arrangements Facilitate the Legitimization of the Role of NGOs in International Organisations?

Peter Van den Bossche¹

Abstract

This article examines the involvement of non-governmental organisations (NGOs) with a number of selected international organisations and the rules on NGO accreditation currently applied by these international organisations. It is submitted that appropriate legal arrangements for accreditation of NGOs facilitate the legitimization of their role in international organisations. None of the examined international organisations have currently implemented fully appropriate legal arrangements for the accreditation of NGOs. The arrangements implemented by the UN Economic and Social Council, however, set a good example for other international organisations and form an excellent basis for further improvement.

Keywords: Global governance, international organisations, NGOs, civil society, accreditation

1 Introduction

The involvement of non-governmental organisations (NGOs) in the policy deliberations and decision-making processes of international organisations has been a debated issue for years. At present, an ever-growing number of NGOs participate, or aspire to participate, in the work of international organisations, rendering the issue particularly topical.²

¹ Professor of International Economic Law and Head of the Department of International and European Law, Maastricht University; former Counsellor and Acting Director of the WTO Appellate Body Secretariat, Geneva. An earlier version of this working paper was presented at the 22nd IVR World Congress in Granada in May 2005. Research on the topic of this paper is undertaken in the context of a interdisciplinary project funded by the Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO) on *Globalisation and the Legitimacy of Power of Non-governmental Organisations*, and forms part of research undertaken in the *Ius Commune* Research School. The author thanks Sergey Ripinsky as well as Bertram Boie and Jill Roche for their able assistance.

² The number of international NGOs has reportedly increased from 6000 in 1990 to 26,000 in 1999. See <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html>, visited on 1 April 2005.

The Cardoso Report of June, 2004, *'We the People: Civil Society, the United Nations and Global Governance'*, examined the relationship between NGOs and the United Nations system and made numerous proposals for improving this relationship.³ As stated in the Background Paper for the Cardoso Report, 'well handled' involvement of NGOs in the policy deliberations and decision-making processes of international organisations 'enhances the quality of decision-making, increases ownership of the decisions, improves accountability and transparency of the process and enriches outcomes through a variety of views and experiences.'⁴ However, 'handled badly, it can confuse choices, hamper the intergovernmental search for common ground, erode the privacy needed for sensitive discussions, over-crowd agendas and present distractions at important meetings.'⁵

This article deals with the existing legal arrangements for the accreditation of NGOs by a number of international organisations, and in particular:

- the United Nations,
- the United Nations Conference for Trade and Development (UNCTAD),
- the International Labour Organization (ILO),
- the International Bank for Reconstruction and Development (IBRD),
- the International Monetary Fund (IMF), and
- the World Trade Organization (WTO).

The role of NGOs in each of these organisations is, in law as well as in practice, quite diverse. This article *first* examines, for each of the international organisations mentioned, the legal basis for involvement of NGOs and the various forms of such involvement as defined in the constituent treaties and secondary rules (resolutions, decisions and guidelines) or reflected in the actual practice of the international organisations concerned. Note that this article focuses on the involvement of NGOs in the policy deliberations and decision-making processes of the international organisations and does not cover other types of NGO involvement, such as involvement in the planning, implementation and evaluation of IBRD development projects.

³ Report of the Panel of Eminent Persons on United Nations-Civil Society Relations, *We the People, Civil Society, the United Nations and Global Governance*, A/58/817, dated 11 June 2004. Available at: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/376/41/pdf/N0437641.pdf?OpenElement>, visited on 1 April 2005.

⁴ *UN System and Civil Society: An Inventory and Analysis of Practices*, Background Paper for the Secretary-General's Panel of Eminent Persons on United Nations Relations with Civil Society, Introduction, May 2003. Available at: <http://www.un.org/reform/pdfs/hlp9.htm>, visited on 1 April 2005.

⁵ *Ibid.*

Equally outside the scope of this article is the involvement of NGOs in the dispute settlement mechanisms of international organisations. *Secondly*, the article examines how the international organisations ensure that NGOs have legitimacy, representativity, accountability and, in general, ‘add value’ to the policy deliberations and decision-making processes. In other words, this paper deals with the criteria for accreditation, i.e., the substantive requirements NGOs must meet to ‘enjoy’ specific forms of involvement and associated rights. *Finally*, the paper looks at the procedures for taking decisions regarding accreditation and the subsequent monitoring of accredited NGOs. The central question addressed in this paper is whether the existing legal arrangements for the accreditation of NGOs facilitate the legitimization of their role in international organisations.

2. *Legal Basis for and Forms of the Participation of NGOs*

From a narrow legal perspective, in order for the role of NGOs in the policy deliberations and decision-making processes of international organisations to be legitimate, such role must be provided for, explicitly or implicitly, in the treaty or charter establishing the organisation. In addition to the constituent treaty, secondary rules may define in more detail the form or forms of NGO involvement.

This section successively examines the legal basis for and the rules defining the forms of the participation of NGOs in the UN, UNCTAD, the ILO, the IBRD, the IMF and the WTO.

2.1 United Nations

Article 71 of the *UN Charter* states:

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

The *UN Charter* thus explicitly provides for the participation of NGOs in the policy deliberations and decision-making processes of the United Nations. It entrusts the task of making suitable arrangements for this participation to one of its principal bodies, the Economic and Social Council (hereinafter referred to as ECOSOC, or the Council). This does not preclude, however, other UN organisations, some of which are discussed below, from having their own arrangements for NGO involvement.

Pursuant to the above mandate, on 25 July 1996 the Council adopted Resolution 1996/31 on the ‘Consultative Relationship between the United Nations and Non-Governmental Organizations’.⁶ Resolution 1996/31, which is currently applicable, significantly updated the arrangements previously set out in Resolution 1296 (XLIV) of 23 May 1968.

Article 71 of the *UN Charter* refers to “consultation” with NGOs, and accordingly, Resolution 1996/31 provides for granting NGOs “consultative status”. There are three types of such status: general consultative status; special consultative status, and inclusion on the Roster. Each type of status corresponds with a different bundle of rights.

General consultative status may be requested by any organisation that is concerned with most of the activities of the Council and its subsidiary bodies, from which substantive and sustained contributions can be expected and whose membership is broadly representative of major segments of society in a large number of countries in different regions of the world.⁷ The rights and privileges associated with this status are the most far-reaching of the three types of consultative relationship. Any NGO in general consultative status:

- is informed of the provisional agenda of the Council and may propose to the Council Committee on Non-Governmental Organizations (NGO Committee) that the Committee request the UN Secretary-General to place items of special interest on the provisional agenda of the Council;⁸
- may orally present to the Council introductory statements of an expository nature on items included on the Council’s agenda at the proposal of the NGO;⁹
- may sit as an observer at public meetings of the Council and its subsidiary bodies;¹⁰

⁶ UN Economic and Social Council, Resolution 1996/31, adopted 25 July 1996, UN Document E/1996/31. Available at: <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm>, visited on 2 April 2005.

⁷ *Ibid.*, para. 22.

⁸ *Ibid.*, paras. 27 and 28.

⁹ *Ibid.*, para 32(b).

¹⁰ *Ibid.*, paras. 29 and 35.

- may submit written statements with a maximum of 2000 words for circulation to the Members of the Council;¹¹ and
- may make oral statements to the Council (at the recommendation of the NGO Committee and subject to the approval of the Council).¹²

In 2004, 134 NGOs qualified for general consultative status.¹³

Special consultative status may be requested by organisations whose scope of competence and activity is limited to only a few of the fields of activity covered by the Council and its subsidiary bodies.¹⁴ NGOs with special consultative status enjoy some of the same privileges granted to NGOs with general consultative status. They are informed of the provisional agenda of the Council;¹⁵ they may sit as observers at public meetings of the Council and its subsidiary bodies;¹⁶ and they may submit written statements with a maximum of 500 words for circulation to the Members of the Council.¹⁷ However, NGOs with special consultative status cannot propose to place items on the agenda of the Council, nor can they make oral statements at meetings of the Council.¹⁸ They may, however, speak at meetings of the Council's subsidiary bodies that deal with subject matters of specific interest to them.¹⁹ In 2004, 1474 NGOs were registered under special consultative status.²⁰

Organisations that do not fulfill the criteria for either general or special consultative status but which, in the opinion of the Council or the UN Secretary-General, can occasionally make useful contributions to the work of the Council are put on a list known as the *Roster*.²¹ Many NGOs are on the Roster by virtue of their consultative status within specialized agencies and other UN bodies.²² NGOs on the Roster are informed of the provisional agenda of the Council and may attend the meetings of the Council and its subsidiary bodies concerned with matters

¹¹ *Ibid.*, para. 30.

¹² *Ibid.*, para. 32 (a).

¹³ See <http://www.un.org/esa/coordination/ngo/>, visited on 18 May 2005.

¹⁴ Resolution 1996/31, *supra*, footnote 6, para. 23.

¹⁵ *Ibid.*, para. 27.

¹⁶ *Ibid.*, paras. 29 and 35.

¹⁷ *Ibid.*, para. 31(e).

¹⁸ See *ibid.*, para. 38(a).

¹⁹ This follows from *ibid.*, para. 32(a).

²⁰ See <http://www.un.org/esa/coordination/ngo/>, visited on 18 May 2005.

²¹ Resolution 1996/31, *supra*, footnote 6, para. 24.

²² See *ibid.*, para.24.

within their field of competence.²³ NGOs on the Roster are consulted at the request of the Council or its subsidiary bodies.²⁴ In 2004, 923 NGOs were included on the Roster.²⁵

Resolution 1996/31 also governs the participation of NGOs in international conferences convened by the UN and their preparatory process.²⁶ NGOs in any type of consultative status will be accredited to participate upon request; other NGOs may request approval.²⁷ An NGO accredited for a conference may attend the conference and its preparatory sessions, although such participation ‘does not entail a negotiating role’.²⁸ An accredited NGO may be given an opportunity to briefly address the preparatory committee and the conference and may also make written presentations during the preparatory process.²⁹

2.2 UNCTAD

The United Nations Conference on Trade and Development (UNCTAD), established in 1964, is the key organisation within the United Nations for promoting development-friendly integration of developing countries into the world economy. It is a forum for intergovernmental deliberations and the exchange of experiences, supported by discussions with experts.³⁰ UNCTAD’s relations with NGOs are governed by Rule 77 of the Rules of Procedure of the Trade and Development Board of UNCTAD.³¹ Rule 77 provides that NGOs concerned with matters of trade, especially trade as related to development, and approved by the Trade and Development Board,³² may designate representatives to sit as observers at public meetings of the Board, its sessional committees and subsidiary organs. Upon invitation and subject to the approval of the Board or of the subsidiary organ concerned, NGOs may make oral statements on matters within the scope of their activities. NGOs may also submit written statements related to items on the agenda of the Board or of its subsidiary organs.

²³ *Ibid.*, paras. 27 and 29.

²⁴ *Ibid.*, para. 24.

²⁵ See <http://www.un.org/esa/coordination/ngo/>, visited on 18 May 2005.

²⁶ Resolution 1996/31, *supra*, footnote 6, paras. 41 to 54.

²⁷ *Ibid.*, para. 42.

²⁸ *Ibid.*, para. 50.

²⁹ *Ibid.*, paras. 51 and 52.

³⁰ See <http://www.unctad.org/Templates/Page.asp?intItemID=1530&lang=1>, visited on 1 April 2005.

³¹ The Trade and Development Board of UNCTAD is the organ that guides UNCTAD’s work in between the quadrennial UNCTAD conferences. Membership of the TDB is open to all UNCTAD Members.

³² For criteria and procedural aspects of this approval, see below.

These statements are then circulated to the members of the Board or the subsidiary organ concerned.

The arrangements concerning the involvement of NGOs in the deliberations and processes of UNCTAD are further outlined in Board Decision 43 (VII) of 20 September 1968 which officially recognizes three categories of NGOs. The *General Category* refers to international NGOs that are interested in, or engage in, activities related to the majority of UNCTAD's institutional concerns – nearly all development-related NGOs officially recognized by UNCTAD are found in this category. The *Special Category* of international NGOs covers NGOs that have special competence in one or two areas of UNCTAD activities.³³ The third category includes *national* NGOs with an established reputation that are considered to have a special contribution to make to UNCTAD's work. These are entered in the *Register*. NGOs in the Register do not enjoy participatory rights aside from the right to receive UNCTAD's documentation. In April 2004, there were 192 NGOs recognized by UNCTAD: 107 in the General Category, 85 in the Special Category and 20 national NGOs in the Register.³⁴

2.3 ILO

The International Labour Organization (ILO), established in 1919 and incorporated into the UN in 1946, is the specialized agency of the United Nations for the promotion of social justice and internationally recognized human and labour rights. It is the forum where social and labour questions are discussed and minimum international labour standards are negotiated and adopted. Within the UN system, the ILO has a unique tripartite structure with workers' and employers' organisations participating as equal partners with governments in the work of the ILO's organs.³⁵ The meetings of the International Labour Conference, the ILO Governing Body and subsidiary ILO bodies thus include representatives of civil society. In addition, the 1919 *ILO Constitution* in Article 12(3) provides for *consultative* relationships with 'recognized' NGOs:

³³ NGOs in the Special Category may attend sessions of the Trade and Development Board and also sessions of selected subsidiary bodies.

³⁴ UNCTAD document, TD/B/NGO/LIST/7 and Corr.1, dated 3 May 2004, *List of Non-Governmental Organizations Participating in the Activities of UNCTAD*, para. 3, Available at: http://www.unctad.org/en/docs/tbngolistd7&c1_en.pdf, visited on 1 April 2005.

³⁵ See <http://www.ilo.org/public/english/about/index.htm>, visited on 1 April 2005.

The International Labour Organization may make suitable arrangements for such consultation as it may think desirable with recognized non-governmental international organizations, including international organizations of employers, workers, agriculturists and co-operators.³⁶

With respect to the arrangements for consultation, the ILO distinguishes between three categories of international NGOs. The first category includes international NGOs with an important interest in a wide range of the ILO's activities. These NGOs are granted either general or regional consultative status. NGOs granted general consultative status (currently 8 NGOs) may participate in all ILO meetings. NGOs granted regional consultative status (currently 16 NGOs) may participate in all regional meetings.

The second category, the Special List of Non-Governmental International Organizations, includes international NGOs other than employers' and workers' organizations which also share the principles and objectives of the 1919 *ILO Constitution* and 1944 *Declaration of Philadelphia*. Inclusion of NGOs on this Special List depends on their demonstrated interest in the ILO's programme of meetings and activities. There are currently more than 150 NGOs on the Special List, including NGOs concerned with the promotion of human rights, poverty alleviation, social security, professional rehabilitation, gender issues and youth matters.

Finally, certain NGOs fall in a third category. The ILO Governing Body extends invitations to these NGOs to attend specific ILO meetings for which these organisations have demonstrated a particular interest.³⁷

2.5 IBRD

The International Bank for Reconstruction and Development (IBRD), commonly known as the World Bank was established in 1945. The Bank is the specialized agency of the United Nations for the reduction of poverty through promotion of sustainable development by providing loans, guarantees, and (non-lending) analytical and advisory services.³⁸ The 1944

³⁶ See <http://www.ilo.org/public/english/about/iloconst.htm#a12>, visited on 1 April 2005.

³⁷ See <http://www.ilo.org/public/english/comp/civil/ngo/reIngios.htm>. Visited 19 September 2005.

³⁸ See <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20122644~menuPK:278902~pagePK:34542~piPK:36600~theSitePK:29708,00.html>, visited on 1 April 2005.

IBRD Articles of Agreement do not provide for the consultation or cooperation with NGOs. The IBRD does, however, maintain relations with NGOs as part of its relations with civil society organisations (CSOs), which include, in addition to NGOs, community-based organisations, indigenous peoples' organisations, labor unions, faith-based groups, and foundations. The IBRD engages in policy dialogue with CSOs and involves CSOs in the planning, implementation and evaluation of projects which the IBRD finances.

The main medium for policy dialogue between the Bank and civil society on specific issues is the annual World Bank-Civil Society Forum. The Forum, created in 2000, was established to 'convene representatives of NGOs [...] and other organized expressions of civil society with relevant expertise in issues identified as the annual focus of the forum.'³⁹ To facilitate the organization of the annual Forum a Joint Facilitation Committee (JFC) was established. The JFC is composed of 14 regional and international civil society networks and staff and senior managers of the Bank. The civil society members of the JFC rotate every year according to the topic of the annual Forum.⁴⁰ The overall objective of the JFC is to secure deeper and more meaningful opportunities for civil society to engage with the World Bank in terms of its operations, policies and governance structures.

Twice a year, in the margin of their Annual and Spring Meetings, the Bank in cooperation with the IMF organizes Civil Society Dialogues. At these events Bank and IMF officials enter into discussion and consultation meetings with participating NGOs on a broad range of topics.

To keep CSOs informed about recent developments that involve and/or may be of interest to civil society, the Bank publishes a monthly electronic newsletter, the *Civil Society Engagement eNewsletter*.

As noted above, the IBRD not only engages in policy dialogue with CSOs, it also involves CSOs in the planning, implementation and evaluation of projects which it finances. This area of the Bank's engagement with NGOs is regulated by the World Bank Operational Manual

³⁹ *Joint Resolution between the World Bank and the NGO Working Group*, 6 December 2000, operational part, para. 1. Available at: <http://www.staff.city.ac.uk/p.willetts/NGOWG/JNT-RES.HTM>, visited on 17 April 2005.

⁴⁰ *Ibid.*, para. 5.

entitled ‘*Involving Nongovernmental Organizations in Bank-Supported Activities*’.⁴¹ It is not covered in this paper.

2.6 IMF

Like the ILO and the IBRD, the International Monetary Fund (IMF) is a specialized agency of the United Nations. Established in 1945, the IMF provides temporary financial assistance to countries to help ease balance of payments adjustment. The Fund also provides technical assistance to build human and institutional capacity to design and implement effective macroeconomic and structural policies.⁴² The 1944 *Articles of Agreement of the International Monetary Fund*, the constituent instrument of the IMF, does not provide for the consultation of or cooperation with NGOs. Despite this, the IMF, like the IBRD, maintains relations with NGOs. However, the IMF does not have a formal arrangement for permanent engagement with NGOs, comparable with the IBRD Joint Facilitation Committee.

The engagement of the IMF with CSOs at the *global level* takes different forms. First, there are regular contacts between IMF management and representatives of CSOs in both small meetings and larger forums. Second, there are meetings, seminars and consultations with IMF staff and Executive Directors on specific policy or country issues. Third, the IMF invites CSOs to contribute to reviews of its policies by attending seminars or by providing comments to papers posted on its external website.⁴³ Fourth, as referred to above, the IMF jointly organizes a series of Civil Society Dialogues with the World Bank.

The global engagement is supplemented by the IMF-CSO contacts at a *country level*. The importance of the latter is clearly reflected in the 2003 *Guide for Staff Relations with Civil Society Organizations*.⁴⁴ When the IMF Managing Director or IMF staff visit a country, they meet with representatives of CSOs. Resident IMF representatives regularly meet and exchange information with local CSOs.⁴⁵

⁴¹ The World Bank Operational Manual, Good Practices, GP 14.70, February 2000. Available at: <http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/1DFB2471DE05BF9A8525672C007D0950?OpenDocument>, visited on 17 April 2005.

⁴² See <http://www.imf.org/external/about.htm>, visited on 1 April 2005.

⁴³ See IMF, *The IMF and Civil Society Organizations*, A Factsheet, March 2005. Available at: <http://www.imf.org/external/np/exr/facts/civ.htm>, visited on 1 April 2005.

⁴⁴ See <http://www.imf.org/external/np/cso/eng/2003/101003.htm>, visited on 1 April 2005.

⁴⁵ See IMF, *The IMF and Civil Society Organizations*, A Factsheet, March 2005. Available at: <http://www.imf.org/external/np/exr/facts/civ.htm>, visited on 1 April 2005.

To keep CSOs informed of recent developments, events, papers and discussions, the IMF publishes the quarterly *IMF Civil Society Newsletter*.

2.7 WTO⁴⁶

The World Trade Organization (WTO), established in 1995, is the key international organisation concerned with the trade relations among countries. Unlike the international organisations discussed above, the WTO is not part of the United Nations family. The WTO facilitates the implementation of 20 international agreements on trade, provides the forum for negotiations among its 148 Member states concerning their multilateral trade relations, and settles international trade disputes. The 1994 *Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement)* in Article V:2 explicitly empowers the WTO to engage with NGOs:

The General Council may make appropriate arrangements for consultations and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

Pursuant to Article V:2 of the WTO Agreement, the General Council adopted in July of 1996 a set of Guidelines regarding the relations between the WTO and non-governmental organisations.⁴⁷ In the 1996 Guidelines, it was agreed that interaction with NGOs should be developed through various means such as the organisation of symposia for NGOs on specific WTO-related issues; informal arrangements to receive information NGOs may wish to make available for consultation by interested delegations; continuing the practice of the WTO Secretariat responding to requests for general information and briefings about the WTO; and participation of the Chairpersons of WTO councils and committees in discussions and meetings with NGOs in their personal capacity.

⁴⁶ This section draws heavily on P. Van den Bossche, *The Law and Policy of the World Trade Organization: Text, Cases and Materials* (Cambridge University Press, 2005), 154-162.

⁴⁷ Decision by the General Council, *Guidelines for arrangements on relations with Non-Governmental Organizations*, WT/L/162, dated 23 July 1996.

The 1996 Guidelines also make the limits of NGO involvement clear. In the concluding paragraph of the Guidelines, the General Council states that ‘it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings’.⁴⁸

NGOs are allowed to attend the plenary sessions of the bi-annual WTO Ministerial Conferences. The number of NGOs represented at these Ministerial Conferences has increased from 108 (Singapore 1996) to 795 (Cancún 2003). However, NGO representatives are not allowed to make any statements and can only attend the formal plenary meetings where heads of governments and trade ministers read out short prepared statements. Access to the working meetings is denied. During the sessions, NGOs are kept informed about the issues under discussion through briefings by the WTO Secretariat.

In autumn of 1998, a special section, the ‘NGO Room’, was created on the WTO website where the WTO Secretariat compiles a monthly list of the NGO position papers received by the Secretariat.⁴⁹ Beginning in 2001, the WTO Secretariat also organises an annual symposium for NGOs and delegations of Members.

3. *Substantive Requirements for Accreditation*

The number of NGOs that want to be involved in the policy deliberations and decision-making processes of international organisations grows every year. It is important for international organisations to ensure that the NGOs actually involved in their deliberations and processes have legitimacy, representativity, accountability and, in general, ‘add value’ to the deliberations and processes. This part of the paper examines how the international organisations discussed above select the NGOs with which they engage. This section thus deals with the criteria for accreditation, i.e., the substantive requirements NGOs must meet to enjoy specific forms of involvement and associated rights.

3.1 United Nations

⁴⁸ *Ibid.*, para. 6.

⁴⁹ See http://www.wto.org/english/forums_e/ngo_e/ngo_e.htm, visited on 8 February 2004.

ECOSOC Resolution 1996/31 on the ‘Consultative Relationship between the United Nations and Non-Governmental Organizations’,⁵⁰ sets out the basic substantive requirements that an NGO must meet to be conferred consultative status in the framework of the Council. In accordance with Resolution 1996/31, NGOs must, first of all, be concerned with matters falling within the (very broad) competence of the Council and its subsidiary bodies.⁵¹ They must be able to demonstrate that their programme of work is of direct relevance and can contribute to the mission of the UN.⁵² The aims and purposes of the NGO must be in conformity with the spirit, purposes and principles of the *UN Charter*.⁵³ Secondly, the NGO must also have recognized standing within its field of competence.⁵⁴ Thirdly, the NGO must have an established headquarters with an executive officer;⁵⁵ a democratically adopted constitution;⁵⁶ a representative and accountable inner structure;⁵⁷ and the authority to speak for its members.⁵⁸ Fourthly, as regards the funding of the NGO, the basic resources must be derived from either national affiliates or from individual members.⁵⁹ Finally, the NGO must attest that it has been in existence for at least two years at the date of receipt of its application for consultative status.⁶⁰ Consultative status may be granted to international, regional, sub-regional and national organisations.⁶¹ To the extent possible, participation of NGOs from all regions, and particularly from developing countries must be encouraged, in order to help achieve a just, balanced, effective and genuine involvement of NGOs from all regions and areas of the world.⁶²

As explicitly stated in paragraph 20 of Resolution 1996/31, decisions regarding arrangements for consultation should be guided by the principle that they are made, *on the one hand*, for the purpose of enabling the Council or one of its subsidiary bodies to secure expert information or advice from NGOs having special competence in the relevant subjects, and *on the other hand*, to enable international, regional, subregional and national NGOs that represent important

⁵⁰ UN Economic and Social Council, Resolution 1996/31, adopted 25 July 1996, UN Document E/1996/31, at <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm>, visited on 2 April 2005.

⁵¹ *Ibid.*, para. 1.

⁵² *Ibid.*, paras. 3 and 8.

⁵³ *Ibid.*, para. 2.

⁵⁴ *Ibid.*, para. 9.

⁵⁵ *Ibid.*, para. 10.

⁵⁶ *Ibid.*, para. 10.

⁵⁷ *Ibid.*, para. 12.

⁵⁸ *Ibid.*, para. 11.

⁵⁹ *Ibid.*, para. 13.

⁶⁰ *Ibid.*, para. 61(h).

⁶¹ *Ibid.*, para. 5.

⁶² *Ibid.*

elements of public opinion to express their views. Therefore, the arrangements for consultation made with each NGO should relate to the subjects in which that NGO has special competence or in which it has a special interest.⁶³

As for the requirements for NGO accreditation to international conferences convened by the UN, it follows from paragraphs 43-45 of Resolution 1996/31 that the criteria remain substantially the same. Additionally, it is explicitly provided that NGOs in any of the three types of consultative status shall as a rule be accredited for participation.⁶⁴

3.2 UNCTAD

Rule 77 of the Rules of Procedure of the UNCTAD Trade and Development Board provides that for an NGO to be granted consultative status the NGO must be concerned with matters of trade and, in particular, with matters of trade as related to development. Board Decision 43 (VII) establishes more detailed criteria, including:⁶⁵

- the aims and purposes of the NGO must be in conformity with the spirit, purposes and principles of the *UN Charter*;
- the NGO must be of recognized standing and should represent a substantial proportion of the organized persons within the particular field in which it operates;
- the NGO must be international in its structure;
- the NGO must have an established headquarters with an executive officer;
- the NGO must have a conference, convention or other policy-making body;
- members of the NGO must exercise voting rights in relation to its policies or action; and
- the NGO must have authority to speak for its members through its authorized representatives.

NGOs seeking consultative status with UNCTAD fill out the special questionnaire and provide additional documents for UNCTAD to assess whether they meet the above criteria.

⁶³ *Ibid.*, para. 20

⁶⁴ *Ibid.*, para. 41.

⁶⁵ See Board Decision 43 (VII), paras. 1:3 – 1:8.

3.3 ILO

In contrast with UNCTAD, the ILO applies an explicitly established set of accreditation criteria. To be represented at a session of the International Labour Conference or at other ILO meetings, an NGO must satisfy a number of substantive requirements. The NGO requesting accreditation must, first of all, demonstrate the international nature of its composition and activities and be represented or have affiliates in a considerable number of countries. Secondly, the NGO must have aims and objectives that are in harmony with the spirit, aims and principles of the 1919 *ILO Constitution* and the 1944 *Declaration of Philadelphia*. Thirdly, the NGO must have formally expressed an interest – clearly defined and supported by its statutes and by explicit reference to its own activities – in at least one of the items on the agenda of the Conference session to which it requests to be invited.⁶⁶

With respect to the ILO's Special List of Non-Governmental Organisations for international NGOs other than employers' and workers' organizations, it should be noted that admission of an NGO to the list depends primarily on whether the aims of the NGO are in harmony with the spirit, aims and principles of the *ILO Constitution* and the *Declaration of Philadelphia*, on the length of existence, membership, geographical coverage of the NGO, and on the practical achievements and the international nature of the activities of the NGO. A further requirement is that the NGO has an evident interest in at least one of the fields of activity of the ILO.⁶⁷ The fact that an NGO has consultative status with the ECOSOC, or a UN specialized agency, is relevant but does not necessarily imply admission to the Special List.⁶⁸

3.5 IBRD

As discussed above, the IBRD involves NGOs in its deliberations and processes in two distinct ways: (1) it engages in policy dialogue with them, the focus of this discussion, and (2) it involves them in the planning, implementation and evaluation of projects it finances. With regard to the NGOs with which the IBRD engages in policy dialogue in the annual World

⁶⁶ For accreditation to the International Labour Conference, the criteria are set out in the Standing Orders of the Conference. For accreditation to ILO meetings other than the International Labour Conference, the criteria are set out in the relevant rules and Standing Orders governing those meetings.

⁶⁷ See <http://www.ilo.org/public/english/comp/civil/ngo/reIngios.htm#ol>, visited on 17 April 2005.

⁶⁸ *Ibid.*

Bank-Civil Society Forum, no specific accreditation criteria have been formulated.⁶⁹ The *Joint Resolution* establishing the Forum states that the Forum ‘will attempt to be as inclusive as possible and, depending on the issues discussed, it will convene representatives of NGOs [...] with relevant expertise in issues identified as the annual focus of the forum.’⁷⁰ The civil society members of the Joint Facilitation Committee (JFC), established to facilitate the organisation of the Forum, rotate every year according to the topic of the annual Forum.⁷¹ No further criteria for the selection the civil society Members of the JFC were defined. Participation in the annual civil society dialogues, organized jointly with the IMF, is for all practical purposes unrestricted and only subject to a registration requirement.⁷²

3.6 IMF

As discussed above, the IMF engages with NGOs at the global level in different ways. IMF senior staff has regular contacts with NGOs; it holds meetings, seminars and consultations with NGOs on specific issues; it requests NGOs to contribute to reviews of its policies; and it organizes, jointly with the IBRD, civil society dialogues.⁷³ In spite of this rather significant degree of engagement, the IMF has not formulated any detailed criteria for the selection of the NGOs it engages with. This selection takes place on an *ad hoc* basis. As discussed above, participation in the annual civil society dialogues, organized jointly with the IBRD, is subject only to a registration requirement.

3.7 WTO

Similarly to the IMF, the WTO engages with NGOs in a number of ways but has not formulated any detailed criteria for the selection of the NGOs it engages with. Article V:2 of the *WTO Agreement* provides for consultation and cooperation with NGOs *concerned with*

⁶⁹ For the 2005 World Bank – Civil Society Global Policy Forum, it was stressed, on the official World Bank website, that participation was by invitation only, but no guidelines on the criteria for NGOs wishing to secure such an invitation were provided.

⁷⁰ *Joint Resolution, supra*, footnote 39, operational part, para. 1.

⁷¹ *Joint Resolution, supra*, footnote 39, para. 5.

⁷² The information requested for formal accreditation is limited the name of the representative of the NGO, date of birth, gender, nationality, passport/ID card number, organization, job title, organization full address, telephone no., fax no. and e-mail address. See

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20436367~pagePK:220503~piPK:220476~theSitePK:228717.00.html>, visited on 1 May 2005. The Executive Directors of the countries from which the request to participate originates *could* object to the accreditation. See below, p. ##.

⁷³ See above, p. ##.

matters related to those of the WTO. The 1996 Decision of the General Council,⁷⁴ regarding NGO involvement, did not provide for any further accreditation criteria. When the WTO was first confronted with the problem of accrediting NGOs on the occasion of the first session of the Ministerial Conference in Singapore in December 1996, the WTO Secretariat accredited *all* non-profit NGOs that could point to activities related to those of the WTO. The representative nature and legitimacy of the NGOs were not examined.⁷⁵ The only additional accreditation criterion applied at the time was the *non-profit character* of the NGO. Private companies and law firms were refused accreditation on this basis. This practice continued at subsequent Ministerial conferences. In fact, rather than a system of accreditation, the WTO has only a simple system of *ad hoc* registration for one event, namely the bi-annual session of the Ministerial Conference.

4. Procedural Aspects of Accreditation

The substantive requirements for accreditation, discussed above, have to be applied in actual cases. The last section of the paper deals with the question of how the international organisations reviewed above take decisions on accreditation and how they subsequently monitor accredited NGOs to suspend or reverse accreditation decisions when necessary.

4.1 United Nations

Resolution 1996/31 prescribes the procedure for obtaining consultative status with the ECOSOC and its subsidiary bodies.⁷⁶ In order to obtain consultative status, an NGO must submit an application, which is then reviewed by ECOSOC's Committee on NGOs. The Committee on NGOs consists of 19 Member States which are elected every four years by the Council on the basis of equitable geographical representation.⁷⁷ The Committee, which meets annually, recommends to the Council which NGOs should be accepted and what status they should be accorded. The final decision is taken by the Council itself. As discussed above, Resolution 1996/31 provides for three types of consultative status. There is, however, no danger

⁷⁴ See *supra*, footnote 47.

⁷⁵ It has been suggested that such examination was beyond the resources of the WTO Secretariat.

⁷⁶ Resolution 1996/31, *supra*, footnote 6.

⁷⁷ *Ibid.*, para. 60.

of an NGO applying for the wrong category. The Committee on NGOs automatically reclassifies the application when appropriate. An NGO may at any time request reclassification.

An NGO granted general or special consultative status with the ECOSOC is under an obligation to submit a report on its activities every four years.⁷⁸ This report, commonly referred to as the quadrennial report, allows the Committee on NGOs to review whether the NGO concerned continues to satisfy the substantive criteria of consultative status as set out above. If the Committee is of the opinion that this is not the case, it can recommend reclassification or withdrawal of the NGOs consultative status to the Council.

There are three cases in which the consultative status of an NGO may be suspended for up to three years or withdrawn:

- (1) if an NGO clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the *UN Charter*, including unsubstantiated or politically motivated acts against Member States of the United Nations incompatible with *Charter's* purposes and principles;
- (2) if there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities such as illicit drugs trade, money-laundering or illegal arms trade;
- (3) if, within the preceding three years an organization did not make any positive or effective contributions to the work of the United Nations and, in particular, to the work of the Economic and Social Council or its subsidiary organs.⁷⁹

A decision to suspend or withdraw the consultative status of an NGO is made by the Council, upon recommendation of the Committee on NGOs.⁸⁰ An NGO whose consultative status is withdrawn may only re-apply for consultative status after three years.⁸¹

To date, very few NGOs have seen their consultative status suspended or withdrawn. In 2000, for example, the Committee on NGOs considered a total of five cases. In only one of these

⁷⁸ Resolution 1996/31, para. 61(c). Under 'exceptional circumstances', the Committee on NGOs can ask for a report between the regular reporting dates. The Committee may ask for such special report when it is informed of an act or a pattern of acts of the NGO concerned which could lead to suspension or withdrawal of the consultative status. See *ibid.*

⁷⁹ *Ibid.*, para. 57.

⁸⁰ *Ibid.*, para. 58.

⁸¹ *Ibid.*, para. 59. Also an NGO whose listing on the Roster is withdrawn may only re-apply for listing after three years.

cases the consultative status of the NGO concerned was eventually suspended by the Council.⁸²

When national NGOs apply for consultative status, a decision on granting this status will only be made after consultation with the Member State concerned.⁸³ While only consultation with, and not the consent of, the Member State is required, the Council is unlikely to grant consultative status to national NGOs when the Member State concerned has serious reservations regarding the grant of consultative status.

With regard to international conferences convened by the UN, Resolution 1996/31 provides that the accreditation of NGOs is the prerogative of Member States. This prerogative is exercised through the preparatory committee of the conference, which acts upon recommendation of the secretariat of the conference.⁸⁴ Note that the preparatory committee shall decide on all recommendations for accreditation within 24 hours after the recommendations of the secretariat have been received. In the event a decision is not made within this period, interim accreditation will be accorded until there is a decision.⁸⁵

4.2 Other International Organisations

In contrast with the ECOSOC, which has a detailed specific procedure for decisions on accreditation *as well as* a specific procedure for the review of accreditation decisions, the other international organisations examined have a less elaborate procedure for accreditation decision-making and no procedure for the review of accreditation decisions.

With respect to UNCTAD, the Secretary-General of UNCTAD, in consultation with the Bureau of the Trade and Development Board, must intermittently prepare a list of NGOs for the approval of the Board. The list is prepared on the basis of information with regard to objectives, activities, structure, membership and funding that NGOs seeking consultative status are required to provide through a special questionnaire.⁸⁶ Consultative status is

⁸² See 'Report of the Committee on Non-Governmental Organizations on the First and Second Part of its 2000 Session', UN Doc. E/2000/88 (Part I) of 5 July 2000 and UN Doc. E/2000/88 (Part II) of 13 July 2000.

⁸³ Resolution 1996/31, *supra*, footnote 6, para. 8.

⁸⁴ *Ibid.*, paras. 41-47.

⁸⁵ *Ibid.*, para. 48.

⁸⁶ See above, p.##.

conferred by the Trade and Development Board, membership of which is open to all UNCTAD Members.

In the ILO, the procedures for conferring general or regional consultative status and for the admittance to the Special List of NGOs have not been spelt out. Concerning the accreditation to the ILO Conferences, it is the ILO Secretariat that first examines the documents and information submitted by NGOs. If it considers that the NGO meets the prescribed requirements, it submits NGO's request to the Officers of the Governing Body for decision.⁸⁷

With respect to the IBRD and the IMF, note that starting with the 2005 World Bank/IMF Spring Meetings, civil society organisations (CSOs) who wish to be accredited for the Meetings can become so by sending a request to the External Relations Offices of the World Bank and the IMF, which will clear the requests. The Executive Directors of the country from which the request originates will have the opportunity to review the list of approved/rejected CSOs. Accreditation will be deemed approved in the absence of objection from the Directors after five working days.⁸⁸

With respect to the WTO, the accreditation of NGOs for the bi-annual sessions of the Ministerial Conference is basically left to the discretion of the WTO Secretariat, although the WTO General Council, of course, can address any issue concerning accreditation that may arise in the run-up to a session of the Ministerial Conference.

5. Conclusions

On the basis of the above analysis, it is submitted that appropriate legal arrangements for accreditation of NGOs definitely facilitate the legitimization of their role. Appropriate legal arrangements include three elements:

- *first*, an explicit legal basis in the constituent treaty of the international organisation for the involvement of NGOs as well as secondary rules defining the forms of this involvement;

⁸⁷ See ILO Secretariat, *Information Note: Representation of international non-governmental organizations at the International Labour Conference and other ILO meetings*, May 2005, p.1, available at <http://www.ilo.org/public/english/comp/civil/ngo/reIngios.htm#ol>, visited on 15 September 2005.

⁸⁸ See <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20436367~pagePK:220503~piPK:220476~theSitePK:228717,00.html>, visited on 17 April 2005.

- *second*, detailed substantive requirements that NGOs need to meet for accreditation; and,
- *third*, appropriate and clear procedures for first-time accreditation and subsequent review.

Such legal arrangements facilitate the legitimization of the role of NGOs because:

- *first*, they give the international organisation concerned incontestable legal authority to involve NGOs in their policy deliberations and decision-making processes in well-defined ways;
- *second*, detailed substantive requirements for accreditation ensure that involved NGOs have legitimacy, representativity, accountability and, in general, ‘add value’ to the policy deliberations and decision-making processes;
- *third*, appropriate and clear procedures for first-time accreditation ensure that decisions on accreditation of NGOs are made in a transparent and effective manner and have the support of the membership of the organisation; procedures for subsequent review of accreditation decisions ensure that NGOs continue to fulfill the requirements for accreditation.

From the analysis of the existing legal arrangements for NGO accreditation, it appears that the constituent treaties of the international organisations examined do not always explicitly provide for a role for NGOs in the policy deliberations and decision-making processes. This is the case, for example, with the IBRD and the IMF. While this has clearly not prevented these organisations from engaging with NGOs, the legitimization of the role of NGOs in the policy deliberations and decision-making processes of the IBRD and the IMF would be definitively facilitated if their constituent treaties provided for an explicit legal basis for NGO involvement. Providing for a legal basis in a constituent treaty is only a first step in ensuring that the NGO involvement is ‘legitimate’ and also seen as such. It is important that secondary rules of an international organization (decisions, resolutions or guidelines) define, in a detailed manner, the form or forms of NGO involvement. The above analysis shows that in respect of some of the international organisations examined, forms of NGO involvement exist which are not defined, or not defined in detail, in secondary rules, but which have nevertheless become part of established practice. Such forms of involvement are more difficult to legitimize than the forms provided for and defined in secondary rules.

As the above analysis demonstrates, the forms of NGO involvement are multiple and diverse. In the UN, UNCTAD and the ILO, NGOs are granted a consultative or observer status. In some instances, this status allows NGOs to suggest items for the agenda, make statements at meetings and/or submit written statements. However, NGOs may not observe or participate in any manner in the meetings of the IBRD or the IMF. This is also the case in the WTO, although NGOs may attend the plenary meetings of bi-annual sessions of the WTO Ministerial Conference. Only in the ILO, representatives of two specific groups of NGOs (labour unions and employers' associations) fully participate in the decision-making processes. In some international organisations, separate bodies for consultations with NGOs have been formally established and added to the institutional structure of the organisation, such as the Joint Facilitation Committee of the IBRD. These bodies have a select membership of NGOs. In many of the organisations examined, the dialogue with NGOs also takes place in annual forums (IBRD), public symposia (WTO) or 'civil society dialogues' (IBRD and IMF), participation in which is in fact unrestricted. It is clear that this diversity of forms of NGO involvement may affect the substantive requirements for accreditation as well as the procedural aspects of accreditation.

From the above analysis it emerges that only the United Nations and UNCTAD have a detailed list of substantive requirements for accreditation of NGOs. The ILO has a basic list of requirements for accreditation. The IBRD, the IMF and the WTO have no or only a very rudimentary list of requirements for accreditation. For these organisations, the absence of detailed accreditation requirements may be due to the fact that the involvement of NGOs in the deliberations and processes of the organisation is very limited and the need for selecting NGOs, therefore, small. A registration system, as applied by the WTO, will in such cases probably suffice. However, to the extent that the involvement is currently already significant or in cases where more involvement is sought, it is important for the international organisation concerned to adopt a detailed list of substantive requirements for accreditation. As described above, this ensures that the NGOs involved in their deliberations and processes have legitimacy, representativity, accountability and, in general, 'add value' to the deliberations and processes. The list of requirements for accreditation employed by the ECOSOC can, in many respects, serve as a model list for other international organizations who wish to allow NGO's greater participation, such as that granted to NGOs given general consultative status

by ECOSOC, including permission to suggest items for the agenda, make statements at meetings and/or submit written statements.

However, some requirements identified by other international organisations may be a useful addition to this model list of accreditation requirements, e.g. the WTO's requirement that accredited NGOs must be non-profit organisations. The latter requirement should, however, not be understood to exclude industry associations. Moreover, it is clear that a model list will always have to be adapted to the specific aims and purposes of the international organisation concerned.

With regard to the procedural aspects of accreditation, the above analysis demonstrates that only the ECOSOC has a detailed procedure for making decisions on accreditation as well as a procedure for the subsequent review of accreditation decisions. The other international organisations examined have, if any, a less elaborate specific procedure for accreditation decisions and no procedure for review of such decisions. As argued above, appropriate and clear procedures for the first-time accreditation ensure that decisions on accreditation of NGOs are taken in a transparent and effective manner and have the support of the membership of the organisation. A model procedure would involve:

- *first*, the secretariat of the international organisation concerned (and its chief official) to receive the requests for accreditation and ensure the completeness of the information in the requests;
- *second*, a committee whose membership of States reflects the membership of the international organisation concerned to review the requests and make appropriate recommendations regarding accreditation; and
- *third*, a main body of the international organisation, including all Member States, to which decide on the accreditation by majority vote.

None of the international organisations examined in this paper currently has fully appropriate legal arrangements for the accreditation of NGOs and, therefore, these arrangements fail to fully legitimize the role of NGOs. The arrangements in place with respect to the NGO participation in the work of the ECOSOC, however, set a good example for other international organisations to follow and form an excellent basis for further improvement. Accordingly, to the extent that respective legal arrangements in other international organisations are improved, they will increasingly contribute to the legitimization of the role of NGOs.

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